



# Attorney General

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Phoenix, Arizona 85007

Robert E. Corbin

November 14, 1989

Barry M. Corey  
Corey & Farrell, P.C.  
Attorneys at Law  
Suite 600 Transamerica Building  
177 North Church Avenue  
Tucson, Arizona 85701

Re: I89-096 (R89-102)

Dear Mr. Corey:

Pursuant to A.R.S. § 15-253(B) we have reviewed your August 8, 1989 opinion letter to Richard B. Wilson, Ed.D., Superintendent of the Amphitheater School District. We concur that students may be expelled for committing crimes off campus. We also concur that A.R.S. § 8-301 does not require that school districts re-admit expelled students.

A.R.S. § 15-843(B) provides in relevant part:

The governing board of any school district shall, in consultation with the teachers and parents of the school district, prescribe rules for the discipline, suspension and expulsion of pupils. The rules shall include at least the following:

. . . . .

4. Procedures for dealing with pupils who have committed or are believed to have committed a crime.

The statute makes no distinction as to the location of a crime a pupil committed or is believed to have committed. We, therefore, will not read into the statute any limitation that a pupil's crime must have been committed on-campus for that student to be subject to expulsion.

A school district's rules relating to expulsion must be reasonable and rationally related to the district's purpose in providing public education. With respect to suspension and expulsion we previously have stated:

A school district governing board must first adopt policies that are reasonable and bear a rational relationship to the school's role in providing a public education. When suspension or expulsion is imposed under those policies, the district must weigh the severity of the punishment against the severity of the conduct. See Rose v. Nashua Board of Education, 506 F.Supp. 1366 (N.H. 1981). If the expulsion or suspension is so grossly disproportionate to the offense as to be arbitrary, it may be a violation of equal protection or substantive due process. Petry v. Flaughner, 505 F.Supp. 1087 (E.D. Ken. 1981); see Donaldson v. Board of Education, 98 Ill.App.3d 438, 424 N.E.2d 737 (1981); Cook v. Edwards, 341 F.Supp. 307 (N.H. 1972); Mitchell v. Board of Trustees, 625 F.2d 669 (5th Cir. 1980).

Ariz. Att'y Gen. Op. 182-139; see also Kelly v. Martin, 16 Ariz.App. 7, 11, 490 P.2d 836, 840 (1971) ("In measuring the reasonableness of an expulsion, courts must give credence to the role and purpose of schools and the means available to school administrators to deal with their problems.")

We also have reviewed A.R.S. § 8-301 and concur with your conclusion that this statute does not authorize a superior court to order, over a school district's objections, the re-admission of an expelled student. We agree that, pursuant to this statute, a juvenile may be re-admitted only when the district and parole/probation officer agree upon guidelines and conditions for re-admission and those guidelines and conditions are approved by the appropriate reviewing authority. The language of the statutes does not require the district to re-admit juveniles. In fact, language mandating that the district re-admit juveniles was specifically deleted from the statute by the Legislature in 1988.<sup>1/</sup> See Laws 1988 (2nd Reg.

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<sup>1/</sup> Prior to the 1988 legislative amendment, the statute read: "The governing board of the school district of residence shall re-admit the juvenile to a school in the district even if the juvenile has previously been expelled. . . ." (Emphasis added.)

Mr. Barry M. Corey  
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Sess.) Ch. 46, § 1; see also Roberts v. Spray, 71 Ariz. 60, 66,  
223 P.2d 808, 812 (1950) (deletions from bill may be considered  
in determining legislative intent.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bob Corbin".

BOB CORBIN  
Attorney General

BC:LSP:CW:em

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August 8, 1989

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Favor

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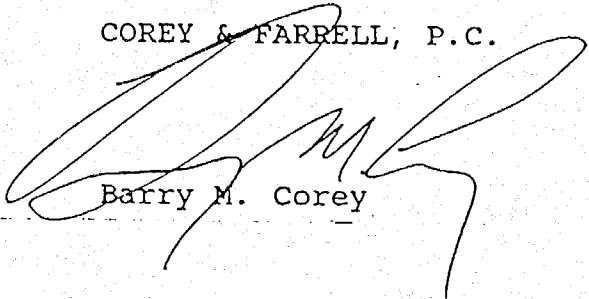
Dear Mr. Corbin:

Enclosed please find a photocopy of an opinion letter to Amphitheater School District No. 10 of Pima County, Arizona, for your review.

Thank you kindly for your attention to this matter.

Very truly yours,

COREY & FARRELL, P.C.

  
Barry M. Corey

BMC/tld  
Enclosure

8.9.89

# COREY & FARRELL, P. C.

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August 8, 1989

Richard B. Wilson, Ed.D.  
Superintendent  
AMPHITHEATER SCHOOL DISTRICT  
701 West Wetmore Road  
Tucson, Arizona 85705

Re: Student Readmission Pursuant to A.R.S. §8-301

Dear Dr. Wilson:

In your letter of June, 1989, you indicated that some questions had arisen as a result of the recent revisions to A.R.S. §8-301. Specifically, you asked whether a superior court judge has the authority, pursuant to A.R.S. §8-301, to compel the district to readmit a pupil who had been convicted of a non-school related crime. You further inquired whether the district had the authority to expel, in the first instance, a pupil who had committed a crime off-campus and not during any school-related activity, that is, a non-school related crime.

QUESTION ONE: Whether the district may expel a student who has committed a crime off-campus and not during any school activity or related to school.

Pursuant to A.R.S. §15-341, the district is empowered to enact rules and regulations for the governance of schools. A.R.S. §15-342 grants the district the power to act in a variety of other ways, and includes the authority to expel students for misconduct.<sup>1</sup> Arizona statutes also authorize the Governing Board to "prescribe rules for the discipline, suspension and expulsion of pupils,"<sup>2</sup> and these rules are required by statute to contain procedures "for dealing with pupils who have committed or are believed to have committed a crime."<sup>3</sup> Accordingly, the district has promulgated rules and regulations governing the conduct of its students. The District's current policies, however, regulate student conduct only while on school grounds and while engaged in school-related activities.<sup>4</sup>

<sup>1</sup> A.R.S. §15-342(1); See also A.R.S. §15-840, et. seq.

<sup>2</sup> A.R.S. §15-843(B).

<sup>3</sup> A.R.S. §15-843(B)(4).

<sup>4</sup> See generally Amphitheater School District policies 5153, 5154, 5155 and 5155.1. But see our opinion letter dated September 15, 1988 regarding off-campus misconduct as a bar to participation in

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While the statutes which empower the district to regulate the conduct of students do not specifically limit that power to the regulation of on-campus or school related conduct, neither do they specifically authorize the district to regulate the off-campus, non-school-related conduct of its students. It is generally recognized that school boards may make decisions "that have a reasonable connection with the educational function entrusted to it by the public,"<sup>5</sup> and this power has been held to include the authority to expel a student whose presence in school is considered to be a threat to the moral well-being of other students.<sup>6</sup> Under this general premise, school regulation of student off-campus conduct has been upheld where the out-of-school conduct had a direct and immediate negative effect on the discipline or general welfare of the school.<sup>7</sup>

Thus, it is generally accepted that a school district may regulate a student's off-campus conduct to some degree when such conduct interferes with the health, well-being and safety of other students or affects the discipline of the school. For example, as we have previously indicated, it is our opinion that the district could restrict or even prohibit student participation in school-sponsored extracurricular activities on the basis of off-campus, non-school related conduct, such as drug use or alcohol consumption.<sup>8</sup> However, the question of whether a student may be expelled from school on the basis of off-campus, non-school related criminal activity has not been addressed in any reported Arizona case.

As stated previously, Arizona statutes do not specifically address the expulsion or suspension of students for criminal activity, except as set forth in A.R.S. §15-843(B)(4), which grants to the governing board the power to promulgate rules for disciplining, suspending and expelling students, including procedures

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extracurricular school-sponsored activities.

<sup>5</sup> Independent School District No. 8 of Seiling v. Swanson, 553 P.2d 496, 501 (Okla. 1976).

<sup>6</sup> Bunger v. Iowa, 197 N.W.2d 555 (Iowa 1972); Nutt v. Board of Education, 278 P 1065 (Kan. 1929).

<sup>7</sup> See generally Bunger v. Iowa, 197 N.W.2d 555 (Iowa 1972); Nutt v. Board of Education, 278 P 1065 (Kan. 1929); Douglas v. Campbell, 116 S.W.2d 211 (Ark. 1909); and cases collected in Annot., "discipline of pupil for non-school conduct", 53 ALR 3d 1124, 1132.

<sup>8</sup> See our opinion letter dated September 15, 1988.

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for "dealing with students who have committed or are believed to have committed a crime." While this statute does not specifically give the school board the authority to expel a student for criminal activity, it appears to authorize the promulgation of a procedure to do so. It is unclear, however, whether the crimes referred to are crimes arising out of school misconduct or other crimes.

Clearly, a district could expel a student for school related misconduct regardless of whether that misconduct also resulted in conviction on criminal charges. In order to resolve the question of whether §15-342 and §15-843 permit a district to expel a student for a criminal conviction based on non-school related misconduct, it is helpful to attempt to determine the legislative intent of those statutes.

To this end, we have reviewed the statutes from other jurisdictions to determine whether states with similar statutes have interpreted those statutes to include that authority. In two states, this issue has been resolved by the legislature. Kansas has a statute which specifically empowers a school board to expel a student for any conduct which resulted in the conviction of the pupil for any offense which is a violation of the state criminal code.<sup>9</sup> Montana's education code provides for the imposition of discipline for student misconduct while in school, on school property, going to or from school, and during "recess and intermission" from school.<sup>10</sup> While the terms "recess" and "intermission" are not defined within the statute, and research-revealed no Montana cases defining those terms, "recess" and "intermission" may refer to periods of time during which school is not in session.

Some states have enacted statutes which specifically limit the suspension or expulsion of students to conduct which has occurred on

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<sup>9</sup> Section 72-8901, Kan. Stat. Ann. states, in relevant part:

"The board of education of any school district may suspend or expel . . . any pupil or student guilty of any of the following: . . . (d) conduct which has resulted in the conviction of the pupil or student of any offense specified in Chapter 21 of the Kan. Stat. Ann. [criminal code] or any criminal statute of the United States . . . ."

<sup>10</sup> Mont. Code Ann. §20-5201.

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campus,<sup>11</sup> while other states limit suspension or expulsion to those offenses enumerated in the statute.<sup>12</sup> However, most statutes, like Arizona's, give governing boards the general authority to discipline students for misconduct and either provide some guidelines for the imposition of such disciplinary action or provide examples of misconduct which would result in expulsion.<sup>13</sup> A.R.S. §15-841 lists some conduct which may justify expulsion. We do not, however, believe that the expression of these "good causes" for expulsion can be viewed as limiting the otherwise broad authority of a governing board in this area.

It is interesting to note that there are few cases addressing the issue of expelling students for criminal activity. Even in the jurisdictions where a specific statute authorizes, or appears to authorize, the expulsion of students for non-school related crimes, we find no reported cases challenging the constitutionality of the statute or its applicability.<sup>14</sup> However, in a jurisdiction having a statute similar to A.R.S. §15-342,<sup>15</sup> the state supreme court interpreted the statutes to permit the suspension of a student who had been charged with reckless driving under the state criminal statutes. In Clements v. Board of Trustees of Sheridan County,<sup>16</sup> the

<sup>11</sup> See e.g., Ky. Rev. Stat. Ann. §158-150; La. Rev. Stat. Ann. §17-416; Neb. Stat. Ann. §79-4170; N.J. Stat. Ann. 18A: 37-2.

<sup>12</sup> See e.g., Alaska Stat. §14-30-045; Cal. [Educ.] Code §48900; Colo. Rev. Stat. Ann. §22-33-106.

<sup>13</sup> See e.g., A.R.S. §§15-342, 841; Ark. Stat. Ann. §80-1629.6; Fla. Stat. Ann. §230-23; N.M. Stat. Ann. §22-5-4.3; Wyo. Stat. §21-4-306 (1977).

<sup>14</sup> See, Annot. to §72-8901, Kan. Stat. Ann. and Annot. to §20-5201, Mont. Code Ann.

<sup>15</sup> W.S. 1977 §21-4-306(A)(iii) states, in relevant part:

"(a) The following shall be grounds for suspension or expulsion of a child from a public school during the school year: . . . (iii) any behavior which in the judgment of the local board of trustees is clearly detrimental to the education, welfare, safety or morals of other pupils . . . ."

<sup>16</sup> 585 P.2d 197 (Wyo. 1978).

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Wyoming Supreme Court held that the statutes authorizing the suspension or expulsion of students for conduct detrimental to the education, welfare, safety and morals of other pupils was constitutional and did not prohibit the suspension of a student who had been driving on a public highway in such a way as to impede the safe progress of a school bus.<sup>17</sup> While the holding was expressed in terms sufficiently broad to uphold a suspension or expulsion of a student for conviction of any criminal activity, the sweep of the holding is tempered, we believe, by the fact that the crime committed involved school property.

Based on our review of all relevant caselaw and the statutes in other jurisdictions, it is our opinion that it was not the legislature's intent to permit expulsion of students solely on the basis of a criminal conviction and that A.R.S. §§15-342, 841 and 843 are not sufficiently broad to empower the district to expel a student on that basis unless the district can demonstrate that the criminal conduct itself is such that the student's continued presence in school jeopardizes discipline in the school or the health, welfare or safety of other students. While no standard for determining when a non-school related crime rises to the level that was set out in the Clements opinion, it would seem that such a determination must be made on a case by case basis, and that the governing board must follow the procedures set forth in A.R.S. §15-843 prior to expelling a student under these circumstances. Further, it is our recommendation that, in the event the district wishes to take disciplinary action against a student convicted of a crime, Policy 5154 should be revised to reflect that being convicted of a crime may also constitute grounds for expulsion.

QUESTION TWO: Whether the district may be compelled to readmit a student pursuant to §8-301.

A.R.S. §8-301 generally provides for the educational rehabilitation of juvenile offenders and clearly states that the juvenile shall, as a condition of probation or release, do one of the following: (1) attend school in order to obtain vocational training or to achieve an appropriate educational level; (2) attend an on-the-job training program; or (3) get and keep a job.<sup>18</sup> A.R.S. §8-301(C) was recently amended to require school officials to meet with the eligible juvenile's probation or parole officer to assist in developing guidelines, objectives, and conditions for readmission to

<sup>17</sup> See supra, note 15.

<sup>18</sup> A.R.S. §8-301(A)(1) and (2).

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school. The agreed upon conditions would then be approved by the appropriate juvenile authority. In the event that the juvenile is readmitted pursuant to the approved, agreed upon conditions, the school district is not prohibited from taking subsequent disciplinary action, including suspension or expulsion, against the juvenile should s/he violate the conditions of his/her readmission or commit any other offense for which the student could be disciplined under general school policies, subject to the procedural requirements of A.R.S. §15-843.

It should be noted that the language of the statute itself does not expressly require the district to readmit the juvenile. In fact, when §8-301 was amended to include the foregoing, the following language was deleted:

"The governing board of the school district of residence shall readmit the juvenile to a school in the district even if the juvenile has previously been expelled . . . ."19  
(Emphasis added.)

Furthermore, A.R.S. §8-301(C)(1) refers to "agreed conditions" for return to school, implying that the school may decline to agree.

Under these circumstances, it is our opinion that A.R.S. §8-301 no longer requires the district to readmit a juvenile, but only requires the district to meet with juvenile authorities and attempt to work out agreed upon guidelines and conditions for readmission. Once agreement is reached between the juvenile officer and the district, the appropriate juvenile authority may approve or reject the conditions. The statute clearly grants the reviewing authority the right to continue the juvenile's expulsion even if the district and the parole/probation officer have agreed upon conditions for readmission. It would seem reasonable, then, to read the statute to mean that, absent any agreement between the district and the juvenile's parole/probation officer as to conditions and guidelines for readmission, the district is not required to readmit the juvenile.

Therefore, it is our opinion that the district cannot be compelled to readmit a juvenile pursuant to §8-301 unless the district and the parole/probation officer agree upon guidelines and conditions for readmission of the juvenile, and those guidelines are approved by the appropriate reviewing authority.

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<sup>19</sup> A.R.S. §8-301(C)(1) (prior to legislative amendment as set forth in Senate Bill 1142, enacted May 9, 1988).

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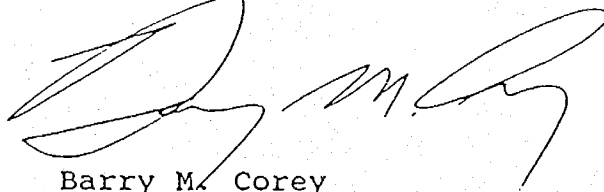
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Pursuant to your request, we have forwarded a copy of this opinion to the Arizona Attorney General for review.

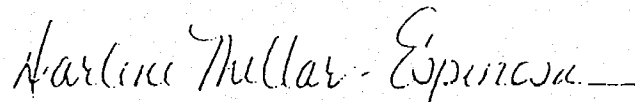
Thank you for permitting us to work with you in connection with this matter. Please do not hesitate to contact us should you have any questions regarding the foregoing.

Very truly yours,

COREY & FARRELL, P.C.



Barry M. Corey



Darlene Millar-Espinosa

BMC/DME/tlg